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Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JAN 12 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The acting district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting District Director,* dated September 5, 2003.

On appeal, counsel asserts that the acting district director failed to consider all relevant factors and equities, and abused his discretion in denying the application. *See Notice of Appeal to the Administrative Appeals Unit (Form I-290B),* dated September 25, 2003. In addition, counsel has submitted a brief in support of the appeal which details the factors which counsel believes demonstrate the applicant's showing of extreme hardship to her U.S. citizen spouse. The brief emphasizes the "emotional pain and unhappiness" the applicant's spouse would suffer if the waiver were denied. *See Form I-290B*, dated September 25, 2003. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant initially entered the United States without inspection on or about April 6, 1999. The applicant had married her spouse in Iran, on March 19, 1997. At the time of their marriage, the applicant's spouse was a lawful permanent resident. In order to come to the United States, the applicant took a circuitous path, traveling to Venezuela, the Dominican Republic, Canada, and finally entering the United States without inspection. *See Applicant's Record of Sworn Statement,* dated April 15, 2001. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on or about January 22, 2001, at which time the applicant simultaneously filed an Application for Adjustment of Status (Form I-485). The Form I-130 was approved on September 27, 2001. The record reflects that subsequent to its filing, the applicant departed the United States for Iran in May of 2002, returning to the United States on August 20, 2002, pursuant to a grant of advance parole. The district director subsequently advised the applicant of her apparent inadmissibility based upon her unlawful presence between April 6, 1999, and the filing of her application for adjustment of status on January 22, 2001. She was advised that she could seek a waiver of inadmissibility which would require that she demonstrate extreme hardship to her U.S. citizen spouse. *See Notice from the District Director,* dated August 22, 2002. The applicant filed the Application for Waiver of Ground of Excludability (Form I-601) on August 22, 2002.

In applying to be admitted as an immigrant, the applicant is seeking admission within 10 years of her May 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's spouse would face extreme hardship if the couple were separated due to the applicant's inability to remain with him in the United States. The evidence in the record supporting the claim of extreme hardship consists primarily of statements from the applicant and her spouse, an evaluation of the applicant's spouse by Noe Valley Counseling Services, and a brief statement from the spouse's physician.

The evidence is offered to support the applicant's claim that her U.S. citizen spouse would suffer emotional and psychological, hardship as well as potential hardship to his physical health due to a previous illness. The AAO will address each of the claims in turn.

In support of the claim, counsel has submitted a declaration from the spouse dated November 19, 2002. In that statement, the applicant's spouse asserts that the couple has a close and loving relationship and that his wife provides him with moral support. He indicates that he will suffer extreme physical and mental hardship if the waiver application is denied. *See Declaration of Seyed Mormotalebi,* dated November 19, 20012. His specific assertion is based upon his claim that he had been diagnosed with cancer at the age of nineteen. He asserts that in order to keep his condition in remission, he must be able to control his stress levels and maintain his mental well being. He contends that his spouse provides him with significant emotional support, and asserts that he will suffer tremendous stress if faced with living without her. *Id.* In addition to the spouse's statement, the record also contains a copy of a brief note from a Dr. [redacted] identified as an Adult Primary Care doctor. The note indicates that the applicant's spouse had been successfully treated for Hodgkin's disease in 1983, and remains in remission. It further notes that "high stress levels and emotional upheaval could lead to a recurrence of Hodgkin's Disease." *See Statement from E. Racah, M.D.,* dated November 21, 2002.

In addition to the claim that the spouse will experience extreme hardship due to a risk to his physical well being, the record contains evidence to support the claim that he will also suffer psychological and emotional harm. First, the spouse's statement states that the thought of losing his wife causes him to lose sleep and have nightmares. In addition, the spouse asserts that he would be unable to return to Iran with her as he fears persecution if he returns *See Declaration of Sayed Mormotalebi*, dated November 19, 2001. The record also contains a copy of a therapist's report addressing the potential negative effects of a denial of the waiver application. *See Report from Spencer Koffman, MFT, Noe Valley Counseling Services,* dated October 18, 2002. The evaluation, prepared by a family counselor, indicates that if the applicant is not permitted to remain in the United States, it will have a negative impact on the spouse's mental health. The evaluation appears to reiterate the report given by the applicant's spouse regarding difficulties arising from his separation from his wife when she traveled to Iran two months after her sister's death. According to the report, the spouse suffered a "major depressive episode" during that time. The evaluation also indicates that during this time, the applicant's spouse stopped going to the restaurant to work, and as a result his business experienced a financial loss. It also relates sleeping difficulties where the spouse "had to resort to sleeping pills to help him through the nights." According to the report, since the applicant's return, the spouse has again begun to function well at work, and no longer suffers from serious depression and anxiety. The evaluation concludes that if the applicant were not permitted to remain in the United States, the spouse would again suffer major depression and would cause him extreme emotional hardship.[1]

[1] While the report of the family therapist relates information, likely from the applicant himself, that he underwent a period of depression and stress during this period, no other evidence corroborates this. It would be reasonable to expect to see evidence from a medical doctor such as his own physician or a mental health professional documenting any diagnosis and/or treatment during that period. However, no such evidence exists, requiring the District Director and AAO to accept at face value the report of the family therapist which relates the statements provided by the applicant's spouse during a consultation obtained to bolster the waiver application. Similarly, no evidence exists to support the claim that during the period of the applicant's absence the spouse's business experienced a financial loss and even if so, how that is attributable to the spouse's mental state.

The claim of hardship based upon the applicant's physical health appears to be a very remote and speculative concern. The record reflects that the applicant has been in remission from his illness for a period of over twenty years, and underwent, in his doctor's words, "successful" treatment and can, in all likelihood, be considered cured. In terms of a relapse, while it is a possibility, it cannot be said that the evidence in the record constitutes indicates anything other than a general statement that stress can be considered a contributing factor to a recurrence. Furthermore, the AAO notes that the applicant's spouse had previously undergone a period of separation from the applicant. Furthermore, to the extent that the applicant's health depends upon avoiding stress, it is likely that the applicant's spouse experiences daily stress associated with operating his restaurant operations. Thus, it is not possible to isolate any stress he suffers from a separation from his spouse as opposed to other stress inducing activities he is likely to encounter during his life. Consequently, based on the preceding, the AAO finds unconvincing the evidence of extreme hardship based upon a claim that the applicant's spouse is at great risk to his physical well being if separated from his spouse.

The AAO turns next to the related claim that the spouse would suffer great emotional harm due to his separation from the applicant. The evidence is essentially the same as that previously discussed. The AAO notes that the record contains some noteworthy omissions. While the record contains a brief statement from the applicant's spouse, the record contains no statement at all from the applicant herself recounting her relationship with her husband, and the effects if any of a denial of the application upon her husband. In contrast, the record does contain two other statements from the applicant, both in response to specific requests from the District Director to explain the circumstances of the applicant's initial arrival in the United States in 1999, and the circumstances of her departure and return to the United States following her sister's death, both of which assisted the District Director in assessing the applicable ground of inadmissibility. However, neither of those statements, although offered in connection with her application for admission to the United States, offered any information in support of the waiver. There is little effort by the applicant herself to facilitate a finding that the grant of a waiver will assist in avoiding extreme hardship to her U.S. citizen husband. Furthermore, the record likewise contains no additional statements from anyone in a position to have observed the couple's interactions, and with any knowledge of the husband's situation such that they could offer an assessment of the potential adverse effects of a denial of the waiver.

Finally, the record contains an assertion by the applicant's spouse that were he to decide to accompany his spouse to Iran, he such a move would subject him to extreme hardship because he fears persecution upon his return. The record does not disclose any other information that indicates that the applicant's spouse would suffer extreme hardship. It appears form the financial information submitted that the applicant's spouse is a reasonably successful businessman in California, owning or managing two restaurants from which he derives a good income. He also appears to own property and operates a business partnership with another individual. He does not, therefore, appear to be financially dependent upon the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation

expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. It is further noted that the applicant and his spouse continued to keep in touch despite the fact that they have been separated, and it is reasonable to assume that she will continue to provide him with emotional support. However, it also appears possible that during the period of their separation, the couple could arrange periodically spend time together in other locations other than Iran and the United States. Nevertheless, even if they are not able to do so, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.